IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 304 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DEPUTY SUPERINTENDENT OF POLICE &1 - Petitioner(s)

Versus

HUSHENBHAI ABDULBHAI PIPARVADIYA – Respondent(s)

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Appearance :

Ms. Archna Rawal AGP for Petitioner No(s).: 1,2.
RULE SERVED for Respondent No(s).: 1.
MR YATIN SONI for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 12/07/2005

ORAL JUDGMENT

1. By filing instant petition under Articles 226 and 227 of the Constitution, the petitioners seek to challenge the order dated 30.6.2004 rendered in Civil Misc. Appeal No.25 of 2004 by the

learned Joint District Judge (5th Fast Track Court), Rajkot by which the appeal filed by the respondent came to be allowed and thereby the order dated 1.5.2004 recorded below application Ex.5 in Regular Civil Suit No.118 of 2004 by the learned 4th Joint Civil Judge (S.D.)., Rajkot dismissing the application for interim injunction came to be set aside and granted ad-interim injunction as prayed for in application Ex.5.

2. Having heard Ms. Archna Rawal, learned AGP for the petitioners and Mr. Yatin Soni, learned advocate for the respondent and having perused the impugned order recorded by the learned Joint District Judge in Civil Misc. Appeal No.25 of 2004, according to this Court, no illegality or infirmity is committed by him in recording the said order requiring interference at the hands of this Court in exercise of powers conferred under Section 227 of the Constitution of India.
3. It may be noted that though the petitioners have labelled this petition as one which is filed under Articles 226 and 227 of the Constitution, in fact, this is a petition filed under Article 227 of the Constitution. It is held by the Supreme Court in the case of Sadhna Lodh v. National Insurance Company Limited, (2003) 3 SCC 524, a petition under Article 226 of the Constitution would not lie against an interlocutory order but a petition under Article 227 of the Constitution only would lie. Admittedly, this petition is filed against an interlocutory order. Therefore, this Court treats this petition as one which is filed under Article 227 of the Constitution of India.
4. In the case of **Ouseph Mathai and others v. M. Abdul Khadir,**(2002) 1 SCC 319, the Supreme Court has held that the petition filed under Article 227 of the Constitution of India cannot be treated like an extension of a statutory appeal or revision.
5. Ms. Archna Rawal, learned AGP could not point out any jurisdictional error committed by the learned Joint District Judge in passing the order which is impugned in this petition.
6. In aforesaid view of the matter, the petition lacks merit and deserves to be rejected.
7. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Interim relief granted at the time of issuance of Rule shall stand vacated.
8. In the facts and circumstances of the case, the learned Civil Judge (S.D.), Rajkot before whom the Regular Civil Suit No.118 of 2004 is pending for final adjudication shall give top priority to the hearing of the suit and shall decide the same as early as possible and preferably on or before 30.4.2006.

(A.M. Kapadia, J.)

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